Salim bin Ismail & Ors v Lebbey Sdn Bhd (No 1)

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO B-02-256-95
SITI NORMA YAAKOB, MAHADEV SHANKAR JJCA AND ABDUL MALEK AHMAD J
14 AUGUST 1995

Civil Procedure *— Stay of execution — Order for summary eviction obtained against applicants — Applicants applied for stay of execution until their claims disposed of in full trial — Whether stay should be granted — Whether damage can be adequately compensated if stay refused*

The applicants were long-standing occupants of a piece of land ('the land') and had erected thereon permanent structures in which they lived. Throughout, they were permitted to occupy the land by the state authority without objection. The land was then alienated by the state authority to the respondent ('Lebbey'). Lebbey claimed that it had borrowed a substantial sum of money to finance the development of the land, and any delay in the development would have adverse financial effects. Lebbey claimed that the applicants' right to occupy the land had been terminated by the alienation, and initiated proceedings under O 89 of the Rules of the High Court 1980 and obtained orders for the summary eviction of the applicants. The applicants then applied for a stay of execution in the court below, but were refused. The applicants appealed, contending that they had a continued right to stay in their homes until their claims had been finally disposed of in a full trial.

Held, granting a stay of execution:

In deciding whether to grant a stay, the court had to balance the financial repercussions which would be suffered by Lebbey, with the imminent destruction of the homes of the applicants if the orders appealed against were enforced. The destruction of the applicants' right to stay in their homes until their claims had been finally disposed of in a full trial could not be adequately compensated with money. This was a special reason why a stay should be granted. The court therefore granted a stay, but directed that the appeal record be filed within seven days from the date of the court's order (see p 3F–I).

[Bahasa Malaysia summary

Pemohon-pemohon adalah penghuni yang telah lama menetap di sebidang tanah ('tanah tersebut') dan telah membina binaan kekal di atasnya di mana mereka tinggal. Sepanjang masa itu, mereka dibenarkan untuk menduduki tanah tersebut oleh pihak berkuasa negeri tanpa bantahan. Tanah tersebut kemudiannya diberi milik kepada penentang ('Lebbey') oleh pihak berkuasa negeri. Lebbey menuntut bahawa ia telah membuat pinjaman kewangan yang besar untuk membiayai pembangunan tanah tersebut, dan apa-apa

kelewatan dalam pembangunan itu akan mengakibatkan kesan kewangan yang buruk. Lebbey menuntut bahawa hak pemohon-pemohon untuk menduduki tanah tersebut telah ditamatkan melalui pemberian milik itu, dan memulakan prosiding di bawah A 89 Kaedah-Kaedah Mahkamah Tinggi 1980 dan memperolehi perintah untuk pengusiran ringkas pemohon-pemohon. Pemohon-pemohon kemudiannya membuat permohonan untuk penggantungan pelaksanaan di mahkamah bawah, tetapi ditolak. Pemohon-pemohon membuat rayuan, dengan menegaskan bahawa mereka mempunyai hak yang berterusan untuk tinggal di rumah mereka sehingga tuntutan mereka telah diselesaikan secara muktamad di perbicaraan penuh.

Diputuskan, membenarkan penggantungan pelaksanaan:

Dalam memutuskan sama ada untuk memberikan penggantungan, mahkamah haruslah mengimbangi akibat-akibat kewangan yang akan dialami oleh Lebbey, dengan pemusnahan rumah pemohon-pemohon sekiranya perintah yang dibuat rayuan dikuatkuasakan. Pemusnahan hak pemohon-pemohon untuk tinggal di rumah mereka sehingga tuntutan mereka telah diselesaikan secara muktamad di perbicaraan penuh tidak boleh dipampasi secukupnya dengan wang. Ini adalah sebab yang khas mengapa penggantungan perlu diberikan. Mahkamah dengan itu membenarkan penggantungan, tetapi memerintahkan bahawa rekod rayuan difailkan dalam masa tujuh hari daripada tarikh perintah mahkamah (lihat ms 3F–I).]

Notes

For cases on stay of execution, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 3120–3125.

Legislation referred to

Rules of the High Court 1980 O 89

Appeal from: Suit Nos 22–264–94, 22–50–94 and Originating Summons No 24–69–94 (High Court, Shah Alam)

R Sivarasa and *Yasmeen Sharif* (*Mahani Hamid & Yasmeen*) for the applicants.

VS Viswanathan (*TH Su & Co*) for the respondent.

Cur Adv Vult

Mahadev Shankar JCA (delivering the judgment of the court): This is an application for a stay of execution which we granted. The respondent has appealed to the Federal Court.

The applicants are long-standing occupants of the land comprised in HS (D)34221 PT No 30186 Mukim Ampang, Daerah Ulu Langat ('the land'). The applicants had erected thereon permanent structures in which they live. Some of them also cultivated the land. Throughout, they were

A permitted to occupy the land by the state authority without objection. On account of their long-standing presence on the land, they claim that they have the right to occupy the land as licensees coupled with equity. The state authority did not take any direct action to terminate the applicants' occupation of the land.

B The land was then alienated by the Selangor State Authority to the respondent's company ('Lebbey') for a substantial premium. Lebbey claims that it had borrowed a substantial sum of money from its bankers in order to finance the development of the land. It is submitted that the interest charges payable on the loan taken escalate from day to day and that any C delay in the development will have adverse financial effects of a magnitude which the applicants cannot compensate.

At all material times, Lebbey was aware of the presence of the applicants on the land. After the land was alienated, Lebbey claimed to have terminated the applicants' right to occupy the land, and initiated D proceedings in the High Court in Shah Alam to evict the applicants. The applicants challenge Lebbey's right to evict them.

On 7 April 1995, Lebbey's applications under O 89 of the Rules of the High Court 1980 were heard and it obtained orders for the summary eviction of the applicants.

E The applicants then applied for a stay of execution in the court below. They were refused and therefore came to us.

It is to be noted that the orders in the court below were not made after full trial, but on a summary application by Lebbey on affidavit evidence. The grounds of judgment of the trial judge are not before us and it would be premature for us to say that this appeal is without any prospect F of success.

In deciding whether to grant a stay, we have to balance the financial repercussions which will be suffered by Lebbey with the imminent destruction of the homes of the applicants if the orders appealed against are enforced.

G The subject-matter of this appeal from the applicants' point of view is their continued right to stay in their homes until their claims have been finally disposed of in a full trial. The destruction of that right cannot be adequately compensated with money. This is a special reason why a stay should be granted. Lebbey's counsel requested that the court only grant a H conditional stay and require the applicants to deposit RM1m if a stay is to be granted. We did not think that such a request was realistic.

We therefore granted a stay, but directed that the appeal record be filed within seven days from the date of our order. We also directed that there should be an early hearing of the appeal, and the costs of this I application abide the result of the appeal.

Order accordingly.

Reported by Jafisah Jaafar